IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CFI OF WISCONSIN, INC. d/b/a CENTURY FOODS INTERNATIONAL	:	**CIVIL ACTION**
v.	:	
WILFRAN AGRICULTURAL INDUSTRIES, INC.	:	**NO. 99-1322**

M E M O R A N D U M

WALDMAN, J. **November 1, 1999**

Presently before the court is defendant's Motion to Dismiss and alternative Motion to Stay this case pending a resolution of a related case in the Chester County Court of Common Pleas based on Colorado River abstention.

Plaintiff Century filed this action on March 15, 1999. The action arises out of defendant Wilfran's alleged breach of an "Exclusive Processing and Joint Marketing Agreement" ("the Agreement") pursuant to which it agreed to purchase certain products from Century. Century asserts that Wilfran currently owes it $3,216,926.37 plus finance charges and interest for goods sold to Wilfran in accordance with the Agreement.

Wilfran and Century are also parties to a pending state court action which is based, in part, on the Agreement. Wilfran filed that action on February 23, 1999 against Ted Sosangelis and Scott Knox, former officers and directors of Wilfran, alleging tortious interference with existing and prospective contractual relations, breach of contract, conversion, conspiracy and breach of fiduciary duty. The claims are based, in part, on actions by

Sosangelis and Knox allegedly taken in violation of their Non-Competition and Non-Disclosure agreements with Wilfran, and their tortious interference with the Agreement. Wilfran appended the Agreement as an exhibit to the complaint in the prior action.

On February 25, 1999, Wilfran filed a second suit in state court seeking damages and injunctive relief against Century, Sosangelis and Knox. In the complaint in that action, Wilfran asserts claims for tortious interference with existing and prospective customer relations, breach of an implied covenant of good faith and fair dealing, conversion, conspiracy, breach of fiduciary duty, breach by Sosangelis and Knox of the Non-Competition and Non-Disclosure agreements and breach by Century of the Agreement.

On May 5, 1999, the two state court suits were consolidated for discovery and trial.

The pendency of a state court action generally does not constitute a bar to proceedings concerning the same matter in a federal court. Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976). In exceptional circumstances, a stay by a federal court in the face of a concurrent and related state case is appropriate for reasons of "wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." Id. See also Trent v. Dial Medical of Fla., Inc., 33 F.3d 217, 225 (3d Cir. 1994). Abstention under Colorado River, however, requires the "clearest of justifications" and only if a defendant

can show "exceptional circumstances" should the court depart from its "unflagging obligation" to exercise its jurisdiction. Moses H. Cone Memorial Hosp. v. Mercury Contsr. Corp., 460 U.S. 1, 20 (1983); Colorado River, 424 U.S. at 817-18; Trent, 33 F.3d at 223. Wilfran has the burden to show that exceptional circumstances exist. See Southeastern Pa. Transp. Auth. v. American Coastal Indus., Inc., 682 F. Supp. 285, 286 (E.D. Pa. 1988).

Colorado River abstention is applicable only if the pending cases are "truly duplicative" or parallel. Trent, 33 F.3d at 223. Although the cases need not be identical in every respect, they must involve substantially the same parties and claims. Id. at 224; Fidelity Fed. Bank v. Larken Motel Co., 764 F. Supp. 1014, 1017 (E.D. Pa. 1991). The federal and state actions at issue are parallel.

Plaintiff and defendant are both parties to the state action. See Moses H. Cone, 460 U.S. at 7 (state and federal cases involved same parties although defendant in federal case appeared as plaintiff in state case). See also Peerless Heater Co. v. Chevron Chem. Co. and Hart & Cooley, Inc., 1998 WL 195706, *2 (E.D. Pa. March 27, 1998) (reversal of roles does not alter parallel nature of cases). The presence of additional parties does not destroy the parallel nature of the two actions. Id. (state and federal actions parallel when all parties to federal action were also parties to state action although state case involved additional parties); Albright v. Sears, Roebuck and

Co., 1995 WL 664742, *1 (E.D. Pa. 1995)(same).

The actions involve substantially the same claims. The cases need not be identical, however, there must be a substantial likelihood that the state litigation will dispose of all the claims presented in the federal case. Rodin Properties-Shore Mall, N.V., v. Cushman & Wakefield of Pa., Inc., 49 F. Supp. 2d 709, 718 (D.N.J. 1999). Both actions are based, in part, on the parties' alleged breaches of the Agreement. See Allied Nut and Bolt, Inc. v. NSS Indus., Inc., 920 F. Supp. 626, 628-29 (E.D. Pa. 1996)(cases parallel where federal plaintiff sued for money owed plus interest on a contract and state plaintiff brought suit for damages based, in part, on breach of same contract).

Although Century's claim in this case has not been asserted in the state action, it could be brought as a permissive counterclaim. See Pa. R. Civ. P. 1031; Allied Nut and Bolt, 920 F. Supp. at 630 (where plaintiff could have asserted federal claims as counterclaims in state action, the state and federal actions were duplicative regardless of whether plaintiff's claims were compulsory counterclaims under state law). Courts have held that two actions are parallel even though a party must amend its pleadings in the state court to raise all claims. See Benninghoff v. Tolson, 1994 WL 519745, *2-3 (E.D. Pa. Sept. 22, 1994) (Pennsylvania courts liberally permit parties to amend their pleadings at any stage of legal proceedings); Fidelity Fed., 764 F. Supp. at 1016-19. The Common Pleas Court clearly would have jurisdiction to hear the state law claim that Century

wishes to assert in this court. See Benninghoff, 1994 WL 519745, *2 (finding of parallelism is supported if state court has jurisdiction to hear claims presented in federal case).

A finding that the cases are parallel does not end the inquiry. The court must then determine whether exceptional circumstances warranting abstention exist. The pertinent factors include (1) whether either court has assumed jurisdiction over any property at issue; (2) the inconvenience of the federal forum; (3) the avoidance of piecemeal litigation; (4) the order in which the courts obtained jurisdiction; (5) which forum's substantive law governs the merits of the litigation; and, (6) the adequacy of the state forum to protect the parties' rights. Moses H. Cone, 460 U.S. at 23, 26; Colorado River, 424 U.S. at 818. The determination does "not rest upon a mechanical checklist, but on a careful balancing of the important factors as they apply in a given case, with the balance heavily weighted in favor of jurisdiction." Moses H. Cone 460 U.S. at 16.

There is no property at issue. The federal courthouse in Philadelphia is no more inconvenient than the state courthouse in West Chester. See American Coastal Indus., Inc., 682 F. Supp. at 287; Fidelity Fed., 764 F. Supp. at 1017 (U.S. Courthouse in Philadelphia as convenient to parties as Bucks County Courthouse).

The mere fact that the issues will be governed by state law does not militate in favor of abstention. A federal court is

presumed to be as competent in applying settled state law as the courts of that state. See Heritage Farms, Inc. v. Solebury Township, 671 F.2d 743, 747 (3d Cir. 1982); American Coastal, 682 F. Supp. at 287. Wilfran has identified no novel, complex or unsettled question of state law which would weigh in favor of abstention. See Ryan v. Johnson, 115 F.3d 193, 200 (3d Cir. 1997); Cottman Transmission Sys., Inc. v. Lehwald, Inc., 774 F. Supp. 919, 923 (E.D. Pa. 1991)(factor carries little weight when state law issues are not particularly complex or unsettled). Moreover, there is a Wisconsin choice of law provision in the Agreement. It thus appears that either court would need to apply the contract law of another jurisdiction to adjudicate Wilfran's claims.

Abstention must be grounded on more than just an interest in avoiding duplicative litigation. See Spring City Corp. v. American Bldgs. Co., 1999 WL 783772, *6 (3d Cir. July 27, 1999). There must exist a strongly articulated congressional policy against piecemeal litigation in the specific context of the case under review. See Ryan, 115 F.3d at 198; Southeastern Pa. Trans. Auth. v. Board of Revision of Taxes of the City of Philadelphia, 49 F. Supp. 2d. 778, 782 (E.D. Pa. 1999).

Wilfran asserts that the diversity statute, 28 U.S.C. §1332, evinces such a strong congressional policy. Given the number of diversity cases in federal court, to hold that the diversity statute alone provides a basis to abstain would eviscerate the requirement that only exceptional circumstances

and the clearest of justifications warrant abstention. See Moses H. Cone, 460 U.S. at 25-26; Ryan, 115 F.3d at 199 (avoidance of piecemeal litigation did not support abstention as Congress provided to plaintiffs like Ryan diversity jurisdiction under 28 U.S.C. §1332); Spring City, 1999 WL 783772, *8 (nothing in diversity case constitutes "exceptional circumstances" that would warrant abstention under Colorado River); Bowdoin v. Deckman, 997 F. Supp. 645, 647 (E.D. Pa. 1998) (no strong federal policy that diversity claims should be tried in state court); Peerless Heater, 1998 WL 195706, *3 (no congressional policy that piecemeal litigation should be avoided found in diversity case); Rodin Properties-Shore Mall, 49 F. Supp. 2d. at 719 (the court found itself "hard-pressed" to articulate federal policy warranting abstention in diversity case).

The state actions were filed first and appear to have progressed somewhat farther. See Moses H. Cone, 460 U.S. at 21 (priority should be measured in terms of how much progress has been made in the two actions). The state court has conducted a preliminary injunction hearing. Discovery appears to be well underway in the state action. The instant case has not proceeded beyond the filing of pleadings, motions and briefs.

The adequacy of the state forum is generally relevant only when that forum is inadequate. Ryan, 115 F.3d at 200. The state court is fully capable of protecting the interests of the parties, particularly where only state claims are at issue. See Fidelity Fed., 764 F. Supp. at 1018 (Bucks County Common Pleas

Court fully capable of protecting the parties substantively and procedurally, especially where only state claims are raised). Century has not asserted that there is any legal barrier to bringing its claim in the state action and, as noted, the court can discern no such barrier.

The conventional factors are variously inapplicable, neutral or militate slightly in favor of abstention. At least in this Circuit, particularly following Ryan, this is not a sufficient basis to forego an exercise of jurisdiction. There is no strongly articulated congressional policy favoring abstention in the circumstances presented. The court cannot conscientiously conclude that defendant has demonstrated "exceptional circumstances" or the "clearest of justifications" for abstention.

Accordingly, the court must deny defendant's motion. An appropriate order will be entered.

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O R D E R

AND NOW, this day of November, 1999, upon consideration of defendant's Motion to Dismiss and alternative Motion to Stay (Doc. #4, Parts 1 & 2), and plaintiff's response thereto, consistent with the accompanying memorandum, **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

BY THE COURT:

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JAY C. WALDMAN, J.